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JAN 26 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WILLIAM R. MALONE
OF COUNSEL

BETTY ANN KANE*
FEDERAL RELATIONS ADVISOR

*NOT ADMITTED TO THE BAR

January 26, 1994

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Presentation on Rate Regulation

Dear Mr. Caton:

Pursuant to 47 C.F.R. § 1.1206, the undersigned submits this original and one copy of a letter disclosing a written ex parte presentation, along with two copies of that presentation. The attached documents were hand-delivered to Ms. Wilson and Mr. Weingarten earlier today.

Sincerely,

MILLER & HOLBROOKE

By



Lisa S. Gelb

Enclosures

cc: Alexandra Wilson, Esquire
Steve Weingarten, Esquire
Ms. Adele Andrews

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BETTY ANN KANE*
GOVERNMENT RELATIONS ADVISOR

*NOT ADMITTED TO THE BAR

January 26, 1994

Alexandra Wilson, Esquire
Acting Chief, Cable Bureau
Federal Communications Commission
2033 M Street, N.W., Room 918
Washington, D.C. 20554-0001

Dear Ms. Wilson:

I am writing on behalf of the City of Wadsworth, Ohio, to inform you of recent actions by Warner Cable, the local cable franchisee. Warner's tactics reflect how one major cable company is responding to the onset of rate regulation and the corresponding lifting of the rate freeze. It also demonstrates a potentially significant problem with the Commission's existing regulations for setting basic service and equipment rates.

Background. The City of Wadsworth has already initiated the rate regulation process. On or about December 10, 1993, the City received from Warner a Form 393. The Form 393 purported to be based on programming and equipment rates in effect on the date of submission. The City issued a tolling order on January 4, 1994, with respect to that rate filing. The City is in the process of conducting further review of Warner's basic service rates. The City also filed a complaint about cable programming service rates.

On December 18, 1993, the City received a packet of materials notifying the City of proposed changes to rates and channel line-ups. Warner attributes the proposed changes to a system upgrade. Attached to this letter are some of Warner's promotional materials, as well as the current rate listing and channel line-up.

The information submitted by Warner shows that, aside from some changes in channel positions, replacing Sneak Preview with the Weather Channel, moving QVC from a cable programming service tier (what Warner proposes to call "satellite" service) to the basic tier, and adding other (non-local) programming to the

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ATTORNEYS AT LAW

Alexandra Wilson, Esquire
January 26, 1994
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access channels, the tiered service offerings will remain largely unchanged. (The City notes that it contends that the "People's Choice" package Warner now offers is a tiered service, subject to regulation, and the City has asked the FCC to regulate that service as a cable programming service.)

Under the proposed new channel line-up, however, Warner plans to add approximately 20 more services it claims will be a la carte or pay per view services. In addition, Warner has stated that, under the new system, any subscriber wishing to receive service beyond the basic tier must rent a converter from Warner, for a monthly charge of \$3.45. Subscribers that want to be able to operate the converter by remote control must rent a remote control device for \$0.15 per month. Under the existing system, subscribers with cable-ready television sets can and do receive both basic and cable programming services without a converter (and without needing to rent a remote control from the operator). Moreover, converter charges under the existing system range from \$0.06 to \$2.99 per month, and remote control devices are \$0.39 per month.

Rate implications of the proposed changes. The implications of the proposed changes are significant for purposes of rate regulation. First, the changes would increase monthly rates for many subscribers by as much as \$3.60, without significant increase in programming services. This seems patently converse to the intent of the 1992 Cable Act. The proposed changes would require basic and expanded basic subscribers to bear increased costs for equipment that is not used and useful to them. Warner should not be permitted to increase rates simply because it has restructured its system in a way that forces subscribers to rent equipment not previously needed in order to receive virtually identical service.

The problem is particularly significant because the Commission has defended its benchmarks in part on the ground that, even where programming rates have increased, customers have benefitted from significant reductions in equipment charges. If operators are allowed on the one hand to justify programming rates based on low equipment rates, and on the other hand are able to raise equipment rates immediately after submitting an initial rate filing, all benefits of rate regulation will be lost.

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Second, the rate increase ignores cost savings. It would allow the company to recover increased capital costs without recognizing savings from installing and maintaining equipment now on line (such as traps) that substitute for converters. Warner appears to contend that it has no obligation, under existing FCC rules, to adjust other rates that are affected by the changes to the equipment basket, even though introducing the new equipment could cause some costs included in the equipment basket (maintenance, for example) to decrease. Moreover, Warner is likely to see some savings in its costs of providing services. Warner apparently intends to claim that it need not and can not adjust benchmark rates to reflect these cost savings.

Third, Warner apparently plans to restructure its system in a way that enables it to collect additional equipment revenues, without offsetting programming rates. Under the Commission's rate regulations, the operator is required to deduct equipment revenues in calculating the allowable benchmark rate. Here, however, Warner based its deductible equipment revenues on its existing charges, and then a week later, announced that it would establish a system almost guaranteed to result in greater equipment revenues. Yet, based on conversations between the City and Warner, the company appears to believe that it has no obligation to adjust programming rates to account for increased equipment revenues. Warner's position would result in an evasion of the Commission's rate formula.

Fourth, Warner appears to take the position that it may alter rates any time it makes a change to the system. It does not seem to think rate changes are limited to an annual inflation adjustment or a quarterly external cost adjustment. This position presents a potential nightmare both to franchising authorities and to the Commission. Companies could submit new proposed equipment charges every week, forcing constant regulatory review, and minimizing the effect of previous rate orders. The company's reading would allow operators to time notices of rate increases to maximize revenues. It is hardly obvious that such a reading is necessary to encourage introduction of equipment that benefits subscribers, since the operator benefits by introducing equipment that yields true cost savings and creates opportunities for sale of enhanced services. On the other hand, allowing operators to flow through the cost of any new equipment encourages operators to add equipment unnecessarily, and may actually encourage operators to create

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ATTORNEYS AT LAW

Alexandra Wilson, Esquire

January 26, 1994

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equipment incompatibility so more subscribers require equipment to receive service.


While the City intends to use its authority under applicable law to address these problems, it wanted to make the Commission aware of the company's plans. The City believes such actions by cable companies may occur elsewhere, and could present significant issues which the Commission should consider as it reviews potential changes to the rate regulations. We would be happy meet with you on behalf of the City of Wadsworth to discuss possible solutions to these problems.

Thank you for your consideration.

Very truly yours,

MILLER & HOLBROOKE

By


Joseph Van Eaton

Enclosures

cc: Steve Weingarten, Esquire



WARNER CABLE

Stephen R. Fry
Division President

Northeast Ohio Division
1655 Brittain Road
Akron, Ohio 44310 (216) 633-9203

December 17, 1993

The Honorable John Hanna
Mayor, City of Wadsworth
145 High Street
Wadsworth, OH 44281

Dear Mayor Hanna and Members of Wadsworth City Council:

As you know, Warner Cable is installing a state-of-the-art fiber optic cable system throughout the neighborhoods of the greater Akron area. I am pleased to announce we are now ready to introduce new programming choices via new technology in the home, and all focused on responding to consumer demands while creating a marketplace for the future.

Just as we are constructing our fiber network in a phased approach, community by community, so will we approach our marketing effort. In the right panel of your folder is a sample 30-day customer notice we will be mailing to your constituents, prior to any channel line-up changes as a result of the marketing effort. It delineates our new channel line-up. This line-up will be effective only for the group of customers who receive the notice. Following the letter is a map of our scheduled marketing activity and timeframe per geographic area. *Until you receive our follow-up notice of marketing activity in your area, your constituents' line-up will remain the same as it is today.*

Our goal is to be the preferred provider of entertainment, information, and telecommunications services. To prepare customers, we will be installing a new type of converter box, the "9000" home terminal, on each TV set connected to any level of our service above the Basic Tier. Each home terminal will be leased to customers for \$3.45 per month. The associated remote control will be \$0.15 per month, plus tax. Each will be itemized on the cable bill, thus replacing the current equipment charges.

Behind your map of activity is a brief outline of some of this new terminal's features and benefits for our customers. As you may note, the use of on-screen picture symbols prompts interactivity, and the remote's menu control keys operate in a computer-like fashion. Our utilization of such technology indeed competitively postures greater Akron with other major markets in Ohio. Our telecommunications infrastructure not only positions your community for the 21st century, but it fosters Warner as a contributor to the joint economic development in the Northeast Ohio region.



-2-

Since our new signal delivery of the Satellite Tier, any a la carte services, or any premium services, requires installation of the home terminal to receive them, a Warner Cable representative will visit each customer's home to personally present and install the terminal. At that time, the customer can choose any one or all of our new programming channels. In the left panel of your folder is a customer information sheet with the updated rates for the new services and equipment. All existing rates remain the same! These sheets will also be provided to customers as contact is made.

Please be aware that all customers who subscribe to the current a la carte services, can purchase all the new expanded services for \$0.95 per month! Why such a good price? Because the more variety of programming our customers have available, the more satisfied they tend to be. Please be sure to read our "Did You Know" piece as well as the Q&A sheet we've prepared to assist you in answering possible constituent questions.

We've invested \$60 million in this upgrade effort; we continue to grow our franchise fee payments; we're an active contributor to education via our Cable in the Classroom program; and we will continue our community involvement. If you've ever wondered why, it's because we're committed to Northeast Ohio. Enclosed is your bookmark, compliments of The Learning Channel, to always remind you.

Our press conference on these changes is Tuesday, December 21, at 10:00am at our Brittain Road office. Please join us if you can. There will be more specific information on our new programming services as well as a demonstration of our new home terminal. We will also begin to air a video presentation of our efforts on our Community Channel 7. I will be contacting you to schedule a meeting the first part of January to address these changes, personally.

It is indeed my hope that you share in the excitement of this positive communications jolt, as Warner continues "leading the way" in the greater Akron area.

Sincerely,

Stephen R. Fry

cc: Mr. William J. Lyren
Members of Wadsworth Cable Commission

Warner Cable of Wadsworth Channel Line-Up



	Pos.	Programming		Pos.	Programming	UG
Basic Tier	2	WKYC/NBC - CH 3	A La Carte	35	Discovery	
	3	WDLI/IND - CH 17		36	American Movie Classics	
	4	WAKC/ABC - CH 23		37	WTBS	
	5	WVIZ/PBS - CH 25	Expanded A La Carte	38	WGN	
	6	WUAB/IND - CH 43		39	ESPN2	
	7	Warner Video Pages/Community Access		40	Comedy	
	8	WBNX/IND - CH 55		41	The Cartoon Channel	
	9	WJW/CBS - CH 8		42	E!	
	10	WEAO/PBS - CH 45		43	Country Music Television	
	11	WEWS/ABC - CH 5		44	The Learning Channel	
	12	WOAC/IND - CH 67		45	Bravo	
	13	WOIO/FOX - CH 19		46	Court TV	
	14	QVC		47	C-SPAN II	
	15	Government Access/BET		48	VISN	
	16	Educational Access		49	Local Programming	
	17	Community Access/CNBC				
Satellite Tier	18	Headline News	Optional	50	Pay Per View Previews	
	19	USA		51	Pay Per View 1	
	20	Nickelodeon		52	Pay Per View 2	
	21	CNN		53	The Movie Channel	
	22	Lifetime		54	Cinemax	
	23	MTV		55	The Disney Channel	
	24	ESPN		56	Showtime	
	25	TNT		57	Home Box Office	
	26	Arts & Entertainment		58	Home Box Office 2	
	27	The Family Channel		59	Home Box Office 3	
	28	The Weather Channel		60	Showtime 2	
	29	The Nashville Network		61	FLIX	
	30	SportsChannel Ohio		62	Pay Per View 3	
	31	C-SPAN I		63	Pay Per View 4	
				64	Pay Per View 5	



WARNER CABLE

Great Performances. Every Day.

December 1993

Dear Valued Warner Cable Customer:

WARNER CABLE HAS BEEN MAKING YOUR NEIGHBORHOOD PICTURE PERFECT!

During the last several months we've been installing a state-of-the-art cable system in your neighborhood featuring extensive use of fiber optics. As you may know, fiber optic technology enhances picture quality, reduces service interruptions and increases the number of channels we can offer.

We are now ready for the next phase of this expansion.

1. On January 24, 1994 your channel line-up will change as noted on the reverse, including The Weather Channel.
2. Shortly thereafter, a representative of Warner Cable will contact you to install our new Cable TV converter box, or home terminal, on each TV set connected to any level of service above Basic Service. (see reverse) At that time, you can subscribe to the Expanded A La Carte Package (positions 38-49).
3. Each home terminal will be leased to you for \$3.45 per month. A remote control will be available for \$0.15 per month, plus tax. The home terminal and the remote control will be itemized on your cable bill, replacing your current equipment charges.

As part of our continuing effort to improve the technology and reliability of your system, each TV set connected to any level of service above the broadcast Basic Service must be connected to our new home terminal. The home terminal will give you features such as an on-screen channel line-up, an on-screen programming guide to let you know when your favorite programs are on, volume control, favorite channel recall, increased parental control and other improvements. The home terminal will also allow us to provide many of the types of services being developed for the future -- "video on demand", in-home shopping, interactive programs, data services, in-home banking, etc.

If you currently subscribe to the Satellite Tier, any A La Carte Services or any Premium Services, you will need a home terminal to continue receiving these services.

This is an exciting time in the communications industry. Many new entertainment and information services will be available to you in the next 30 days, making your cable system one of the most innovative and responsive in the country. You and your family will have the power to choose the television services which are right for you. And, we will continue providing high quality Customer Service to each one of our customers in the Wadsworth area.

At Warner Cable, we are bringing the future of television home to Wadsworth.....**today!**

Sincerely,



Stephen R. Fry
President, Northeast Ohio Division



WARNER CABLE

Great Performances. Every Day.

OPERATIONS OVERVIEW

Pre-Upgrade

- 39 Total Channels of Programming
- 2 Channels of Pay-per-View Programming

Post-Upgrade

- 59 Total Channels of Programming
- 5 Channels of Pay-Per-View Programming

	<u>Greater Akron Area</u>	<u>City of Wadsworth</u>
● Miles of Cable	1,560	87
● Homes Passed by Cable	173,794	7,190
● Customers	102,267	4,233
● Schools Served (Public, Private and Parochial)	145	8

November month-end data

● 1992 Franchise fees	\$1,600,000	\$70,638
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ANNOUNCING IMPORTANT INFORMATION ON

New FCC Rules & Regulations New Channel Line-Up

New Rates

RULES and REGULATIONS

As you may know, the Cable Consumer and Protection Act of 1992 (also known as the Cable Act) requires specific changes in our business. These new rules were issued by the Federal Communications Commission (FCC) and state we must completely **separate our equipment charges**, from our **service charges**. This means you will now see a separate section of your bill identifying the **charge for all cable equipment** in your home, and a separate section for all cable services in your home.

Below is an itemized listing of our **new monthly rates**, which are **in compliance with the new FCC regulations**. These rates are **effective with this enclosed billing**.

WADSWORTH MONTHLY RATES

MONTHLY SERVICE		PREMIUM SERVICE PACKAGES	
Basic Service	\$10.72	Any Two Premium Services	\$22.90
Standard Tier Service	\$ 9.38	Any Three Premium Services	\$33.05
People's Choice Package (Discovery Channel, WTBS, American Movie Classics)	\$ 2.31	Any Four Premium Services	\$41.45
A La Carte (\$1.15 each)		All Five Premium Services	\$50.90
Cable Service	\$22.41	INSTALLATION	Call For Details
PREMIUM CHANNELS		Service Calls	To Be Announced
HBO	\$12.55	(Charges may apply for non-cable related services rendered or excessive wear and tear of Warner Cable owned equipment)	
Cinemax	\$12.55	MONTHLY EQUIPMENT	
Showtime	\$12.55	Standard Converter	\$.06/each
The Movie Channel	\$12.55	Premium Converter	\$.20/each
The Disney Channel	\$11.50	Premium Converter	
OTHER SERVICES		(with volume control)	\$ 2.99/each
Additional Outlets	No Charge	Remote Control	\$.39/each
Premium Service(s)			
on additional outlets	\$ 4.95/month		
In-House Amplifiers (for two or more additional outlets; one-time charge)	\$46.17*		
TV Guide	\$ 2.99/month		
FRANCHISE FEES			
Wadsworth	5.623%		
Community Service Fee	\$ 2.15	*Plus tax	

"Ask About Our Special Cleveland Cavaliers And Cleveland Indians Packages"

IN GENERAL

The changes noted in this information sheet are **all effective as of your September billing**. Please be aware that we will be **changing our channel line-up on September 1, 1993**, and enclosed is a new line-up. Please **keep this information sheet handy** for your channel line-up information. Due to our current negotiations with some of the broadcast stations in our area, we may be forced to make other channel line-up changes in early October. We will keep you informed.

With Warner Cable, you are a part of some fast yet exciting changes, which are certain to help keep our country, a leader in the communications industry.

A valuable product, emerging technology, commitment to our community, and **YOU** — that's Warner Cable.



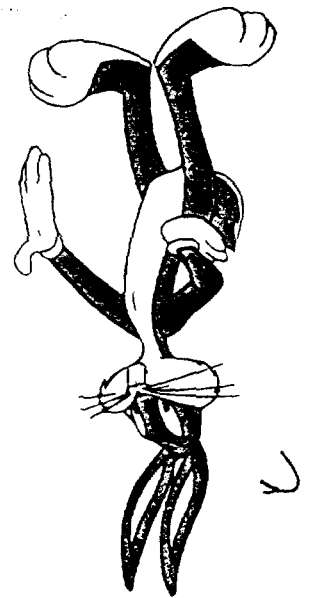
WARNER CABLE
Great Performances. Every Day.

(over)

with all these changes?

What's Up Doc

Eh,



WARNER CABLE
Great Performances. Every Day.

	<u>POS.</u>
Basic	2
Basic	3
Basic	4
Basic	5
Basic	6
Basic	7
Basic	8
Basic	9
Basic	10
Basic	11
Basic	12
Basic	13
Std Tier	14
Std Tier	15
Std Tier	16
Std Tier	17
Std Tier	18
Std Tier	19
Std Tier	20
Std Tier	21
Std Tier	22
Premium	23
Std Tier	24
Std Tier	25
Std Tier	26
Premium	27
Std Tier	28
Std Tier	29
	30
A La Carte	31
A La Carte	32
A La Carte	33
Basic	34
Basic	35
Basic	36
PPV	37
PPV	38
Premium	39
Premium	40
Premium	41

WADSWORTH

PROGRAMMING

WKYC / NBC - Channel 3 Cleveland
WDLI / IND - Channel 17 Canton
WAKC / ABC - Channel 23 Akron
WVIZ / PBS - Channel 25 Cleveland
WOIO / FOX - Channel 19 Cleveland
Warner Video Pages / Community Access
WBNX / IND - Channel 55 Cuy. Falls
WEWS / ABC - Channel 5 Cleveland
WEAO / PBS - Channel 49 Akron
WJW / CBS - Channel 8 Cleveland
WOAC / IND - Channel 67 Canton
WUAB / IND - Channel 43 Cleveland
ESPN
TNT
USA Network
Headline News
Arts & Entertainment
Lifetime
C-SPAN
CNN
QVC Warner Home Shopping
The Disney Channel
Nickelodeon
Sneak Prevue
MTV
HBO
The Nashville Network
The Family Channel
SportsChannel Ohio
Discovery
WTBS / IND - Channel 17 Atlanta
American Movie Classics
Municipal Access
Educational Access
Community Access
Warner Home Theatre (VC)
Warner Home Theatre (RQ)
Cinemax
Showtime
The Movie Channel